

§ 1942.123 Loan closing.

(a) *Ordering loan checks.* Checks will not be ordered until:

(1) Form FmHA or its successor agency under Public Law 103-354 440-57, "Acknowledgement of Obligated Funds/Check Request," has been received from the Finance Office.

(2) The applicant has complied with approval conditions and any closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(3) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(b) *Public bodies and Indian tribes.* (1) After loan approval the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Loans will be closed in accordance with the closing instructions issued by OGC and §1942.19 of subpart A of this part 1942.

(c) *Organizations other than public bodies and Indian tribes.* District Directors are authorized to close loans to organizations other than public bodies and Indian tribes without closing instructions from OGC. State Directors, in consultation with OGC, should develop standard closing procedures and forms as needed. Assistance with loan closing and a certification regarding the validity of the note and mortgage or other debt instruments should be provided by the applicant's attorney. Appropriate title opinion or title insurance is required as provided in §1942.17 (j)(4)(i)(B) of subpart A of this part 1942.

(d) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve

security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgements, and other certificates.

(e) *Mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument. The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(f) *Notes and bonds.* When the debt instrument is a note or single instrument bond fully registered as to principal and interest a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(g) *Disposition of title evidence.* All title evidence other than the opinion of title and mortgage title insurance policy, will be returned to the borrower when the loan has been closed.

(h) *Multiple advances.* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. The following actions will be taken prior to issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for the retirement of the interim instruments and the issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. In developing the permanent instruments, the sequence of preference set out § 1942.19(e) of subpart A of this part 1942 will be followed.

(i) *Bond registration record.* Form FmHA or its successor agency under Public Law 103-354 442-28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(j) *Loan checks.* Whenever a loan check is received, lost, or destroyed, the District Director will take the appropriate actions outlined in FmHA Instruction 2018-D (available in any FmHA or its successor agency under Public Law 103-354 office). Checks which cannot be delivered within a reasonable amount of time (no more than 20 calendar days) will be handled in accordance with FmHA Instruction 2018-D (available in any FmHA or its successor agency under Public Law 103-354 office.)

(k) *Safeguarding bond shipments.* FmHA or its successor agency under Public Law 103-354 personnel will follow the procedures for safeguarding mailings and deliveries of bonds and

coupons outlined in FmHA Instruction 2018-E (available in any FmHA or its successor agency under Public Law 103-354 office), whenever they mail or deliver these items.

(l) *Review of loan closing.* When the loan has been closed, the District Director will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the District Director's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review FmHA or its successor agency under Public Law 103-354 standard forms only for proper execution, unless the State Director brings attention to specific questions. Facility development should not be held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provisions of § 1942.12 of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 59 FR 54788, Nov. 2, 1994]

§§ 1942.124-1942.125 [Reserved]

§ 1942.126 Planning, bidding, contracting, constructing, procuring.

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.